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DISTRICT

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,)	3:73-cv-00127-MMD-WGC
)	
Plaintiff,)	
)	STIPULATED SCHEDULING
WALKER RIVER PAIUTE TRIBE,)	<u>ORDER AND DISCOVERY PLAN</u>
)	
Plaintiff-Intervenor,)	SPECIAL SCHEDULING REVIEW
)	<u>REQUESTED</u>
v.)	
)	
WALKER RIVER IRRIGATION DISTRICT,)	
a corporation, et al.,)	
)	
Defendants.)	

1. Pursuant to Minute Order of October 17, 2018 (ECF 2389), the Court instructed the principal parties to consult regarding the development of a proposed Scheduling Order and Discovery Plan.

2. The Principal Parties have consulted, and at the Status Conference held in this matter on March 4, 2019, they acknowledged their agreement to this Scheduling Order and Discovery Plan.

NOW, THEREFORE, the Principal Parties consisting of the United States, the Walker River Paiute Indian Tribe, the Walker River Irrigation District, Nevada Department of Wildlife, Lyon County, Centennial Livestock, Peri & Sons, the Schroeder Group, the California State

1 Agencies, Mono County, Mineral County and the Walker Lake Working Group, pursuant to
 2 Local Rule 26(1)(b) submit the following Scheduling Order and Discovery Plan:

3 **SPECIAL SCHEDULING REVIEW REQUESTED**

4 This Scheduling Order and Discovery Plan concerns the water right claims asserted by
 5 the Walker River Paiute Indian Tribe (Tribe) and the water right claims asserted by the United
 6 States on behalf of the Tribe and comports with Fed. R. Civ. P. Rule 26(f) and LR 26-1. To the
 7 extent that time periods or deadlines do not comply with standard practices or time frames, that
 8 is due to the unique circumstances of this case, the complexity of issues, and the number of
 9 parties involved in this case. Special scheduling review by the Court will be required.
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11 1. **The United States' and Tribe's More Detailed Statement of Claims.** To give
 12 greater detail and specificity to the water right claims last asserted in 1997 and based on the
 13 anticipated completion of expert analysis, the United States and the Tribe will jointly file a
 14 more detailed statement of claims on or before May 3, 2019, and any associated amendment to
 15 the first amended counterclaims last filed in 1997. The United States will only issue amended
 16 claims, if at all, as they relate to the water rights claims asserted on behalf of the Tribe.
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18 2. **Responses to the Amended Counterclaims.** Any party may answer the First,
 19 Second and Third Claims for Relief asserted by the United States in its First Amended
 20 Counterclaim (ECF No. 59) and the First Amended Counterclaim of the Walker River Paiute
 21 Tribe (ECF No. 58) on or before August 1, 2019. In the event that on or before May 3, 2019,
 22 the United States and Tribe file second amended counterclaims concerning water right claims
 23 for the Tribe, parties will answer those second amended counterclaims only. Only answers and
 24 affirmative defenses will be allowed. There will be no counterclaims required or permitted.
 25 Establishment of this date for the filing of answers does not change the provisions of the April
 26 18, 2000 Case Management Order (ECF No. 108) at page 12, paragraph 13, that no default
 27 shall be taken under Fed. R. Civ. P. 55, and the Court will take no action to enter a default or a
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1 default judgment under that Rule against any party not filing an answer. No party shall respond
2 to any allegation contained in the United States' First Amended Counterclaim (ECF No. 59) at
3 pages 13 through 31, paragraphs 20 through 73. After August 1, 2019, any party who has not
4 answered as provided herein may only do so upon leave of Court.

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6 3. **Initial Disclosures.** The initial disclosures required by Fed. R. Civ. P. Rule
7 26(a) will be made by the United States, the Tribe, and parties filing answers on or before
8 October 1, 2019.

9 4. **Defendants' Coordination of Discovery and Dispositive or Partially**
10 **Dispositive Motions.** Between May 3, 2019 and November 22, 2019, counsel for the Walker
11 River Irrigation District, the Nevada Department of Wildlife, Lyon County, Centennial
12 Livestock, Peri & Sons, the Schroeder Group, California State Agencies (California State
13 Water Resources Control Board, California Department of Fish and Wildlife, and the California
14 Department of Parks and Recreation) and Mono County, California, will confer to coordinate
15 their discovery, including sharing discovery, scheduling discovery, and other matters related to
16 discovery so as to facilitate the orderly and cost effective acquisition of relevant information
17 and materials. In addition, to the extent feasible during that period of time, they will confer on
18 matters related to dispositive or partially dispositive motions, including coordination of filing,
19 grounds and other matters to avoid duplication. Those Defendant Parties will submit the
20 results of their discussions to the United States and Walker River Paiute Tribe on or before
21 November 22, 2019. Thereafter, the United States, Walker River Tribe, those Defendant
22 Parties and any other party who has answered shall meet and confer to propose necessary
23 amendments to this Scheduling Order, if any. The parties shall submit their proposal to the
24 Court on or before December 16, 2019, and the Court shall issue any orders needed to
25 resolve disputes between the parties, if any, and to amend this Scheduling Order accordingly.
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1 5. **Discovery.** In addition to the initial disclosures referenced in paragraph 4 above
2 and the expert disclosures referenced in paragraph 6 below, the following discovery plan is
3 proposed:

4 a. **Subjects of Discovery.** Discovery will be related to the legal and factual
5 bases for the water right claims asserted for the Tribe in the First Amended Counterclaims and
6 related to the Answers, including affirmative defenses asserted in response thereto;

7 b. **Commencement.** Unless the Court orders otherwise, discovery
8 governed by Fed. R. Civ. P. Rules 28 through 37 shall commence on December 16, 2019;

9 c. **Privileged Material.** Pursuant to Fed. R. Evid. 502(d), production of a
10 privileged or work-product-protected document, whether inadvertent or otherwise, is not a
11 waiver of privilege or work-product protection in this case or in any other federal or state
12 proceeding;

13 d. **Discovery Cut-Off Date.** Unless the Court orders otherwise, the last
14 day for discovery shall be June 1, 2021. Discovery requests must be made far enough in
15 advance of this deadline to allow completion of the discovery by the deadline date; and

16 e. **Amending the Pleadings and Adding Parties.** Amendment of
17 pleadings and adding parties will be governed by Fed. R. Civ. P. Rule 15 and 19,
18 respectively, as well as L.R. 26-1(b)(2).

19 f. Pursuant to Fed. R. Civ. P. 16(B)(3)(b)(v), the court directs that before
20 filing a motion relating to discovery the movant must request a conference with the court to
21 discuss the discovery issue with the court and involved counsel.

22 6. **Expert Disclosure and Reports.** Disclosure of experts shall proceed
23 according to Fed. R. Civ. P. 26(a)(2), except that:
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1 b. The disclosure of responsive experts and responsive expert reports by the
2 United States and the Tribe and by any party filing an answer to the Amended Counterclaims
3 shall be on or before 6 months after the disclosure deadline for expert and initial expert reports.

4 c. The disclosure of rebuttal experts and rebuttal expert reports by the
5 United States and the Tribe and by any party filing an answer to the Amended Counterclaims
6 shall be 90 days after the deadline for responsive expert disclosures and responsive expert
7 reports; and
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9 d. Generally, depositions shall commence only after responsive or rebuttal
10 reports have been submitted. If reasonably necessary for purposes of preparing responsive
11 expert reports, with the consent of relevant parties, deposition of such expert witness may
12 commence immediately after the expert witness's opening expert report has been disclosed. If
13 the relevant parties do not consent, the party seeking to take a deposition prior to responsive or
14 rebuttal expert reports may seek leave of Court to conduct such a deposition.
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16 7. **Dispositive Motions.** A schedule for dispositive motions will be developed
17 based on the consultation between the parties and the Court described in paragraph 4 above.
18 Generally, responses to dispositive or partially dispositive motions shall be submitted no later
19 than 60 days after a motion is filed and replies to dispositive or partially dispositive motion
20 responses shall be submitted no later than 30 days after responses to a motion are filed.
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22 8. **Pretrial Order.** A joint pretrial order will be submitted as further ordered by
23 the Court concerning any remaining disputed issues of fact to be resolved through trial.

24 9. **Fed. R. Civ. P. Rule 26(a)(3) Disclosures.** The disclosures required by Fed. R.
25 Civ. P. 26(a)(3) will be submitted as further ordered by the Court.

26 10. **Alternative Dispute Resolution.** The parties have conferred about the
27 possibility of using alternative dispute resolution processes. The parties are not opposed to
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1 settlement conference or other alternative methods of dispute resolution as contemplated by LR
2 16-5 at an appropriate time.

3 11. **Alternative Forms of Case Disposition.** The parties have considered consent
4 to trial by a magistrate judge under 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73 and the use of the
5 Short Trial Program (General Order 2013-01). The parties do not consent to the use of a
6 magistrate judge to address the claims asserted by or on behalf of the Tribe.
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8 12. **Electronic Discovery.** The parties agree that production of disclosures pursuant
9 to Fed. R. Civ. P. 34 may (but is not limited to) occur in paper or a convenient electronic
10 format, but that all information will be preserved in its native electronic format, and will be
11 produced in such format only upon request. Such request may occur either initially or after
12 review of previous production. A party shall have 30 days to respond to a request for
13 production in native format, if the subject of the request has previously been produced
14 otherwise. Unless unduly burdensome or costly, the parties agree that PDF files that are
15 produced will be electronically searchable, and hard copies that are produced will be of
16 sufficient quality to scan into electronically searchable files.
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18 Dated: March 6, 2019.

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26 **IT IS SO ORDERED.**

27 DATED: March 7, 2019.

28 William G. Cobb
UNITED STATES MAGISTRATE JUDGE